

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM L. HOLT,)	
Plaintiff,)	
)	
vs.)	Civil Action No. 13-22
)	
ERIK K. SHINSEKI, SECRETARY,)	
DEPARTMENT OF VETERANS AFFAIRS,)	
Defendant.)	

ORDER

On July 26, 2013, Defendant, Erik K. Shinseki, filed a partial motion to dismiss (ECF No. 4), seeking the dismissal of Counts I and III of the complaint filed on January 4, 2013 by Plaintiff, William L. Holt. On July 29, 2013, an order was entered, requiring Plaintiff to respond to the motion by August 19, 2013. On August 19, 2013, Plaintiff filed two documents: a response to the partial motion to dismiss (ECF No. 8) in which he conceded to the dismissal of Count I but argued against the dismissal of Count III; and an Amended Complaint (ECF No. 7) which removed Count I and renumbered Count III as Count II. Then on August 21, 2013, Defendant filed a reply brief (ECF No. 9), in which he continued to press for the dismissal of the claim in Count III of the (original) complaint.

As amended in 2009, the Federal Rules of Civil Procedure provide that a party may amend its pleading once as a matter of course within 21 days after service of, inter alia, a motion to dismiss under Rule 12(b). Fed.R.Civ.P. 15(a)(1)(B). An amended complaint “supersedes the original and renders it of no legal effect....” West Run Student Housing Assocs., LLC v. Huntington Nat’l Bank, 712 F.3d 165, 171 (3d Cir. 2013) (citation omitted). A defendant has 14 days in which to respond to the amended complaint. Fed.R.Civ.P. 15(a)(3). In this case, the

parties have confused matters by responding in two ways to the motion to dismiss – Plaintiff filed both a response and an Amended Complaint, and Defendant filed a reply to the response but did not address the Amended Complaint. The filing of the Amended Complaint has rendered moot the partial motion to dismiss, as well as the response and reply thereto.

AND NOW, this 22nd day of August, 2013,

IT IS HEREBY ORDERED that the partial motion to dismiss filed by Defendant, Erik K. Shinseki (ECF No. 4), is dismissed.

IT IS FURTHER ORDERED that Defendant file a response to the Amended Complaint by September 4, 2013.

s/Robert C. Mitchell
ROBERT C. MITCHELL
United States Magistrate Judge